ServiceNet, Inc. *and* Service Employees International Union, Local 285, AFL–CIO, CLC. Case 1–CA–39682

December 15, 2003

DECISION AND ORDER

BY MEMBERS LIEBMAN, SCHAUMBER, AND WALSH

On March 25, 2003, Administrative Law Judge Wallace H. Nations issued the attached decision.* The Respondent filed exceptions, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the Respondent's exceptions and brief and affirms the judge's rulings, findings,[1] and conclusions[2] and adopts the recommended Order as modified.[3]

I. INTRODUCTION

The issue presented in this case is whether the Respondent unlawfully insisted to impasse on two contractual proposals for a successor contract—one involved the manner in which changes to a health insurance plan would be decided; the other involved the duration of the proposed agreement. For the reasons set forth herein, we agree with the judge that the health insurance proposal and duration-clause proposals were nonmandatory subjects of bargaining and that when the Respondent insisted to impasse on them it violated Section 8(a)(5) and (1) of the Act.

II. FACTUAL BACKGROUND

As more fully set forth in the judge's decision, the Union has represented the Respondent's employees for the past 7 years, and has negotiated successive collective-bargaining agreements, the most recent of which was effective until June 30, 2001.[4] On May 8, the parties commenced negotiations for a successor agreement. The parties exchanged contract proposals and bargained on several dates from May to October. On October 19, the Respondent presented, on a package basis, a contract proposal that included the following two clauses:

> Article 19—Health and Welfare
>
> (3) A committee comprised of up to five (5) bargaining unit members will meet with ServiceNet management, prior to any changes being made in the group health insurance plan, to discuss whether to keep the current group health insurance plan in lieu of the other options which may be available at that time.
>
> Article 37—Duration and Renewal
>
> This Agreement shall become effective July 1, 2001 except as otherwise specifically provided for herein and shall remain in full force and effect until October 31, 2004. It is mutually agreed to and understood between the parties that upon the expiration date of this Agreement, if agreement has not been reached on a successor Agreement, that all of the terms and provisions of this Agreement shall be kept in full force and effect until a successor collective bargaining agreement is agreed upon and ratified by the parties.

The Union refused to enter into an agreement containing these clauses.

The Respondent presented another contract proposal on December 14. The proposal included an identical version of article 19(3), and a modified version of article 37, which consisted of changing the proposed expiration date from October 31, 2004 to June 30, 2002. The Respondent presented this proposal as a "PACKAGE PROPOSAL AS A BASIS FOR SETTLEMENT" and "LAST, BEST, AND FINAL OFFER." On January 16, 2002, the Respondent informed the Union that the parties need not schedule another meeting, and threatened to declare impasse if the Union did not accede to its latest offer: "If we do not receive a response from you by January 25, 2002, it shall be our position that we have reached impasse in these negotiations, and we will be taking action to implement our Last, Best, and Final Offer."

[1] The Respondent has filed exceptions to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The Respondent's exceptions imply that the judge's rulings, findings, and conclusions demonstrate bias and prejudice. On careful examination of the judge's decision and the entire record, we are satisfied that the Respondent's contentions are without merit.

Certain errors in the judge's decision have been noted and corrected.

[2] There are no exceptions to the judge's dismissal of the complaint allegations that the Respondent violated Sec. 8(a)(5) and (1) by entering negotiations with a fixed intention of reaching agreement only on its terms, or by engaging in surface bargaining.

[3] We have modified the judge's recommended Order and notice to include the description of the bargaining unit at issue.

[4] All dates hereafter occurred in 2001 unless otherwise stated.

On January 22, 2002, the Union expressed its opinion that the parties had not reached an insurmountable deadlock, and demanded that the Respondent rescind its declaration of impasse and return to the bargaining table. The Respondent refused, indicating again that if the Union failed to respond to its proposal by January 25, 2002, it would conclude the parties were at impasse and it would implement at least the economic portion of its proposal. On February 5, 2002, the Respondent declared impasse, withdrew its entire proposal, and told the Union that it would maintain the terms of the previous bargaining agreement, refuse to deduct union dues, and would not recognize the arbitration aspect of the grievance-arbitration article. The Respondent refused the Union's demand for continued bargaining until May 16, 2002, when the parties returned to the bargaining table.

On September 3, 2002, the Respondent presented the Union with a proposal for a bargaining agreement that would commence on July 1, 2001 and expire on June 30, 2003. The September 3 proposal included a number of modifications to the Respondent's prior proposals, including a revised article 19(3), which read as follows:

> (3) A committee comprised of up to five (5) bargaining unit members, as may be designated by the union, will meet with ServiceNet management, prior to any changes being made in the group health insurance plan, to discuss whether to keep the current group health insurance plan in lieu of the other options which may be available at that time.

Article 37 remained unchanged. The Union accepted all of the terms of the September 3, 2002 proposed bargaining agreement except article 37, which the Respondent refused to withdraw or modify.

III. THE JUDGE'S DECISION

The judge concluded that the Respondent violated Section 8(a)(5) and (1) by insisting to impasse over article 19(3) and article 37, which he found to be permissive subjects of bargaining; and by declaring impasse and threatening to implement a part of its proposal.

The judge found that article 19(3) was a permissive subject of bargaining because it affected the right to bargain over the health benefits plan and not the plan itself. Analogizing this proposal to the merit pay proposal at issue in *McClatchy Newspapers*, 321 NLRB 1386 (1996), enfd. 131 F.3d 1026 (D.C. Cir. 1997), cert. denied 524 U.S. 937 (1998), the judge found that article 19(3) would have permitted the Respondent to bypass the Union and deal directly with the employees, thereby allowing the Respondent an unfettered right to implement any changes it wanted.

The judge also found that article 37 was a permissive subject of bargaining because it was an attempt to control conditions of employment after the terms of the bargaining agreement expired. In reaching this finding, the judge analogized article 37 to an interest-arbitration clause, which the Board has concluded is a permissive subject.[5] Additionally, because the Union had agreed to the inclusion of a no-strike clause, the judge observed that article 37 would effectively prevent the employees from going on strike to support the Union's economic position following the expiration of the bargaining agreement.

Finally, the judge found that the Respondent, as of January 25, 2002, insisted to impasse over the inclusion of these nonmandatory proposals in a successor collective-bargaining agreement. In support of this finding, the judge noted that the Respondent had consistently presented its contract proposals on a package basis and had declared that the parties were at impasse on January 25, 2002.

IV. ANALYSIS

A. Article 19(3)

We agree with the judge that article 19(3), as proposed on October 19, is a nonmandatory subject of bargaining because the proposal allows the Respondent to circumvent the Union and negotiate directly with the employees over a term or condition of employment, namely, the company health insurance plan. In affirming the judge's finding, however, we do not find it necessary to rely on *McClatchy Newspapers*, supra. Rather, we agree with the judge that article 19(3) is a nonmandatory subject of bargaining for the reasons set forth in *Retlaw Broadcasting Co.*, 324 NLRB 138 (1997), enfd. 172 F.3d 660 (9th Cir. 1999).

In *Retlaw Broadcasting Co.*, the Board found that the employer's proposal, which allowed direct dealing with employees over mandatory subjects of bargaining that included a merit pay system and personal service contracts with newly hired employees, was a nonmandatory subject of bargaining within the meaning of Section 8(d) of the Act. Approving the Board's decision, the Ninth Circuit noted that the employer's proposal "would be a license for the employer to go to impasse over whether it has to deal with the union; that is the antithesis of good-faith collective bargaining, which requires the employer to accept the legitimacy of the union's role in the process." *Retlaw Broadcasting Co. v. NLRB*, 172 F.3d at 666 (quoting *Toledo Typographical Union No. 63 v. NLRB*, 907 F.2d 1220, 1224 (D.C. Cir. 1990), remanding 295

[5] Citing *Laidlaw Transit*, 323 NLRB 867 (1999).

NLRB 626 (1989), cert. denied 498 U.S. 1053 (1991)) (internal quotation marks omitted). The Ninth Circuit, therefore, enforced the Board's decision on the basis that an employer "cannot relegate the union to a mere observer on the very matters for which the Act prescribes it to have a critical role." Id. at 666–667.

Similarly here, article 19(3) diminishes the Union's role as the employees' exclusive bargaining representative regarding changes to the employees' health insurance benefits, a matter that directly affects terms and conditions of employment. For this reason, article 19(3), like the proposal in *Retlaw Broadcasting Co.*, constitutes a subject over which the Respondent could not lawfully bargain to impasse.

The Respondent argues that the parties did not reach impasse over the inclusion of this clause in a successor agreement because it continued to bargain, and eventually reached agreement with the Union over a revised version of article 19(3). Before the parties reached agreement on this issue, however, the Respondent declared impasse, ceased deducting union dues and fees, and refused to arbitrate grievances. Acting in conformance with its declaration, the Respondent also refused the Union's demands for further bargaining and did not meet with the Union from January until May 2002. The parties' subsequent agreement does not, as the Respondent contends, prove that the parties were not at impasse in January 2002, but rather shows, at best, that the impasse was subsequently broken. We therefore agree with the judge that, as of January 25, 2002, the Respondent had insisted to impasse that article 19(3) be included in the collective-bargaining agreement and thus violated Section 8(a)(5).

B. Article 37

We affirm the judge's finding that the Respondent violated Section 8(a)(5) by insisting to impasse over article 37 because it is a nonmandatory subject of bargaining. We agree with the judge that article 37 is analogous to an interest-arbitration clause, which the Board has found to be a permissive subject of bargaining. See, e.g., *Laidlaw Transit*, supra at 869, and cases cited. While duration clauses are generally treated as mandatory subjects of bargaining,[6] article 37 is different. Unlike the typical clause, it does not simply govern the duration of the agreement during its term. Rather, this article also requires adherence to the contract—including any no-strike and no-lockout undertakings—*after* it has expired and while negotiations for a new agreement are ongoing. The parties are, of course, free to enter into such an agreement—i.e., it is not an illegal proposal. By so agreeing, they would thereby voluntarily forego their respective rights to take economic action in support of their bargaining positions and indeed would afford a measure of stability and certainty during the negotiation process. But, neither party can be compelled to relinquish its right to exercise its economic weapons perpetually. That is effectively what treating article 37 as a mandatory subject of bargaining would accomplish. See *Laidlaw*, supra. Accordingly, we agree with the judge that the Respondent's insistence that the any final agreement contain article 37 was a violation of Section 8(a)(5) of the Act.[7]

[6] See *Steelworkers of America Local 2140 (United States Pipe)*, 129 NLRB 357, 360 (1960).

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that Respondent, ServiceNet, Inc., Northampton, Massachusetts, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(b).

"(b) Insisting to impasse on its so-called Duration proposal."

2. Substitute the following for paragraph 2(a).

"(a) On request, bargain collectively with Service Employees International Union, Local 285, AFL–CIO, CLC as the exclusive representative of all employees in the following appropriate bargaining unit with regard to rates of pay, wages, hours of employment, and other terms and conditions of employment and, if an agreement is reached, embody that agreement in a written, signed agreement:

[7] Member Schaumber does not find that art. 37 is analogous to an interest-arbitration clause. An interest-arbitration clause requires the parties to submit disputes over the terms of a new collective-bargaining agreement to binding arbitration. Art. 37, in contrast, does not establish the method by which terms of a successor contract will be determined but instead specifies the period of time during which the proposed contract would have been effective. It is, as its title suggests, a duration clause. Member Schaumber nevertheless agrees with his colleagues that art. 37, although not an illegal proposal, was not a mandatory subject of bargaining and that the Respondent violated Sec. 8(a)(5) by bargaining to impasse over it. Art. 37 would have continued the terms and conditions of the proposed agreement until a new contract was agreed upon and ratified. Because the parties could fail to reach agreement on a successor contract, art. 37 fails to provide a fixed term for the agreement and is therefore not a mandatory subject of bargaining. See *Massillon Community Hospital*, 282 NLRB 675, 676 (1987) (employer violated Sec. 8(a)(5) by bargaining to impasse over terminable-at-will duration clause) and cases cited therein.

As noted above, the Union has agreed to all of the Respondent's proposals except art. 37, and the Respondent continues to insist on that clause as a condition of reaching any agreement.

All regular full-time and regular part-time Crisis Clinician 2, Crisis Clinician 3, Outpatient Therapist (LICSW), Outpatient Therapist (Licensed Psychologist), Day Treatment Counselor 1, Day Treatment Counselor 2, Medication Clinic Nurse, Program Aide, Teacher Assistant, Early Intervention Specialist 1, Early Intervention Specialist 2, Allied Health Professional, Account Clerk 1, Account Clerk 2, Account Clerk 3, Purchasing Specialist, Staff Accounts, Accounts Receivable Assistant, Accounts Receivable Specialist, Senior Accounts Receivable Specialist, Computer Support Technician, Computer Technology Specialist, Secretary/Receptionist, Administrative Assistant, Early Intervention Information Systems Coordinator, Triage Coordinator, Revenue Coordinator, Intake Coordinator and Clinician (Bachelor's level) employed by Respondent, but excluding all other employees, guards and supervisors as defined in the Act.

3. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C., December 15, 2003

Wilma B. Liebman, Member

Peter C. Schaumber, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT in negotiations, insist to impasse on our proposal to bypass the Union and deal directly with our unit employees on the matter of unilateral changes to health plans.

WE WILL NOT in negotiations, insist to impasse on our duration proposal.

WE WILL NOT insist to impasse on nonmandatory subjects of bargaining, declare impasse prematurely, and threaten to implement a part of our proposals.

WE WILL NOT, in any like or related manner, interfere with, restrain or coerce you in the exercise of rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain collectively with the Union as the exclusive representative of our employees in the following appropriate unit with regard to rates of pay, wages, hours of employment, and other terms and conditions of employment and, if an agreement is reached, embody that agreement in a written, signed agreement:

All regular full-time and regular part-time Crisis Clinician 2, Crisis Clinician 3, Outpatient Therapist (LICSW), Outpatient Therapist (Licensed Psychologist), Day Treatment Counselor 1, Day Treatment Counselor 2, Medication Clinic Nurse, Program Aide, Teacher Assistant, Early Intervention Specialist 1, Early Intervention Specialist 2, Allied Health Professional, Account Clerk 1, Account Clerk 2, Account Clerk 3, Purchasing Specialist, Staff Accounts, Accounts Receivable Assistant, Accounts Receivable Specialist, Senior Accounts Receivable Specialist, Computer Support Technician, Computer Technology Specialist, Secretary/Receptionist, Administrative Assistant, Early Intervention Information Systems Coordinator, Triage Coordinator, Revenue Coordinator, Intake Coordinator and Clinician (Bachelor's level) employed by Respondent, but excluding all other employees, guards and supervisors as defined in the Act.

SERVICENET, INC.

Thomas J. Morrison, Esq. for the General Counsel.
Albert R. Mason, Esq., of Chicopee, Massachusetts, for the Respondent.

DECISION

STATEMENT OF THE CASE

WALLACE H. NATIONS, Administrative Law Judge. This case was tried in Northampton, Massachusetts on October 21, 2002. The charge in case 1–CA–39682 was filed by Service Employees International Union, Local 285, AFL–CIO, CLC (Union) on February 1, 2002 and an amended charge was filed on June 27, 2002. The complaint and notice of hearing issued on June 28, 2002. ServiceNet, Inc. (ServiceNet or Respondent) filed timely

answer admitting certain allegations including jurisdiction, while denying the commission of any unfair labor practices.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, provides mental health services at its facility in Northampton, Massachusetts. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and a healthcare institution within the meaning of Section 2(14) of the Act. It is admitted and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. An Overview of the Dispute.

The Union has represented a unit of employees employed by Respondent for at least 7 years. The unit is described as follows:

> All regular full-time and regular part-time Crisis Clinician 2, Crisis Clinician 3, Outpatient Therapist (LICSW), Outpatient Therapist (Licensed Psychologist), Day Treatment Counselor 1, Day Treatment Counselor 2, Medication Clinic Nurse, Program Aide, Teacher Assistant, Early Intervention Specialist 1, Early Intervention Specialist 2, Allied Health Professional, Account Clerk 1, Account Clerk 2, Account Clerk 3, Purchasing Specialist, Staff Accounts, Accounts Receivable Assistant, Accounts Receivable Specialist, Senior Accounts Receivable Specialist, Computer Support Technician, Computer Technology Specialist, Secretary/Receptionist, Administrative Assistant, Early Intervention Information Systems Coordinator, Triage Coordinator, Revenue Coordinator, Intake Coordinator and Clinician (Bachelor's level) employed by Respondent, but excluding all other employees, guards and supervisors as defined in the Act.

The most recent collective-bargaining agreement was effective from July 1, 1999 to June 30, 2001.[1] During negotiations for a successor agreement, it is alleged that Respondent continued to insist, as a condition of reaching any new collective-bargaining agreement, on two proposals, one relating to health insurance and the other a so called "Evergreen" clause. The health insurance proposal included a provision that, annually, and before any changes could be made to the terms and provisions of any health insurance plan or plans, Respondent would meet with the bargaining unit represented by the Union to discuss possible changes to any plan or plans, and to obtain input from the unit. The Evergreen clause would have continued all contractual terms and conditions of employment after contract expiration until a new agreement was reached.

Even though the Union objected to these clauses, it is alleged that Respondent presented as a "package proposal" an offer including these clauses, declared that the parties were at impasse, and threatened to implement all or part of its proposal. Because the health insurance and Evergreen clauses are permissive subjects of bargaining, General Counsel contends that Respondent's continued insistence on these proposals, in the face of the Union's objections to them, was unlawful, and Respondent's actions violated Section 8(a)(5) and (1) of the Act.

The complaint alleges specifically that Respondent violated the Act by:

> 1. During the period of negotiations for a successor agreement, Respondent engaged in the following conduct:
>
> (a) Entered into negotiations with the fixed intention of frustrating agreement or of reaching agreement only on its own terms:
>
> (b) About October 19, 2001, and thereafter, tendered package proposals on a take-it-or-leave-it basis where the packages included the subjects set forth immediately below;
>
> (c) About October 19, 2001, and thereafter, attempted to undermine and bypass the Union as collective-bargaining representative by proposing a contract term that permitted the Respondent to deal directly with unit employees concerning health insurance;
>
> (d) About October 19, 2001, and thereafter, insisted as a condition of any agreement that the Union agree to a contract term establishing a clause that would effectively prevent the Union from engaging in strike activity following the expiration of the collective-bargaining agreement.
>
> (e) By its overall conduct, Respondent has failed and refused to bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit.
>
> (f) The conditions of employment described above are not mandatory subjects for the purposes of collective bargaining.
>
> (g) About January 25, 2002, in support of the conditions described above, Respondent declared an impasse in bargaining.
>
> (h) About January 25, 2002, Respondent threatened to implement its December 14, 2001 contract proposal.

The complaint allegations raise the following issues for determination:

> 1. Did Respondent enter negotiations with a fixed intention of reaching agreement only on its own terms in violation of Section 8(a)(5) and (1) of the Act?
>
> 2. Did Respondent violate Section 8(a)(5) and (1) of the Act by bargaining to impasse over its health insurance proposal, with included a provision that "annually, and before any changes are made to the terms and provisions of any health insurance plan or plans, the Agency will meet with the Bargaining unit to discuss possible changes to any plan or plans and to obtain input from the Bargaining unit?"
>
> 3. Did Respondent engage in bad-faith bargaining and violate Section 8(a)(5) and (1) of the Act by insisting, over the Union's objections, to its Evergreen clause?

[1] All dates are in 2001 unless otherwise noted.

4. Did Respondent violate Section 8(a)(5) and (1) of the Act by declaring impasse and threatening to implement its proposal?

5. Did Respondent fail and refuse to bargain in good faith with the Union by engaging in surface bargaining in violation of Section 8(a)(5) and (1) of the Act?

B. Statement of the Facts

The facts in this case are not in dispute. The Union has represented a unit of employees employed by Respondent for at least 7 years. The most recent collective-bargaining agreement between the parties was effective from July 1, 1999 through June 30, 2001. Article 33 of the collective-bargaining agreement was a no-strike, no-lockout provision that stated, in relevant part, "The Union agrees that there shall be no strikes . . . during the term of this agreement."

Pursuant to the duration clause of the collective-bargaining agreement, the Union, by letter dated February 20, gave Respondent notice of its intent to open negotiations for a successor collective-bargaining agreement. The Union and Respondent began negotiations for a successor agreement in May 2001. Through January 2002, the parties met about every 2 to 3 weeks to negotiate. The negotiation sessions lasted about 2 hours, and there were approximately 17 bargaining sessions. Richard Page was the Union's chief bargaining spokesman; he was assisted by, among others, Margaret Tomasko, Margaret Parker, and Chris Mero. In addition, unit employees attended the sessions. Page took notes at the negotiating sessions. Bruce Barshefsky, the Respondent's director of administration and finance was the Employer's chief spokesman. Medora Paquette, human resources director, and Barbara Franklin assisted him at the bargaining table.

The first negotiating session took place on May 8. The parties discussed ground rules for collective bargaining, as well as issues that they had been discussing at periodic labor-management meetings. The parties agreed to exchange proposals at the next session. Respondent stated that its proposals would be presented on a "package" basis.[2] The parties next met on May 17. The Union presented its initial contract proposal to Respondent at this session. Respondent gave the Union its initial proposal as well. After the proposals were exchanged, they were discussed. After these discussions, the parties caucused. Other than general comments being made, the parties did not engage in substantive discussions at this session.

The Union's initial proposal called for a contract that would expire on May 1, 2002. The Union stated that it wanted a May date because it wanted to coordinate bargaining and get similarly funded agencies set up with a common expiration date. The Union believed it would have greater leverage with the Commonwealth of Massachusetts on increasing funding of mental health agencies if the contracts were coordinated to expire simultaneously. The Union also proposed that article 35, political education, be modified, because a common expiration date in May, in conjunction with article 35, political action, fostered effective lobbying. Indeed, Respondent felt the same. Respondent joined other trade association partners and lobbied the legislature. In its initial proposal, the Union also proposed an increase in the Employer's health and welfare contributions and that paid dental insurance be added to the contract. It also proposed that travel expenses be increased to Internal Revenue Service's rate. The Union stated that it was looking for wage increases and uniformity in step increases throughout the wage grid; its initial proposal did not, however, contain any specifics concerning wages.

The cover sheet or prologue of Respondent's proposal stated, in relevant part, "all proposals are and will be set forth in a package bargaining basis." Respondent proposed in Article 19: Health and Welfare, that:

> Annually, and before any changes are made to the terms and conditions of any health insurance plan or plans, the Agency will meet with the Bargaining unit to discuss possible changes to any plan or plans and to obtain input from the Bargaining unit.[3]

While the Employer also proposed a contract effective through October 31, 2004, the Employer's proposed article 37: duration and renewal, contained language that stated that all of the terms of the contract would remain in full force and effect until a successor contract was adopted.[4] The practical effect of this Evergreen clause was that unit employees could never engage in any type of strike activity directed at the Employer.[5] The employer did not address any wage issues in this proposal. Respondent proposed to add two positions to the bargaining unit, a medical records coordinator and an account clerk. Respondent also proposed that during an employee's initial orientation to the agency, the agency would provide the employee with a collective-bargaining agreement and the union membership card authorizing payroll deductions as well as the Union's agency service fee card which is an accommodation that the agency had also agreed to with the united Auto Workers. Respondent also included a "Notice" to the Union about how insurance changes had been handled in the past.

In its initial discussions, the Union attempted to focus on its proposals, as opposed to Respondent's article 19 proposal. The Union did, however, state unequivocally that it found Respondent's proposal unacceptable and rejected Respondent's Evergreen clause.

The parties met again in May and June. On about June 1, the Union presented a package of proposals to the Respondent. This proposal "fleshed out" some issues. For example, the Union proposed a minimum wage of $10 per hour and that the first five steps in the wage grid be removed. The Union still proposed that the contract expire on May 1, 2002. Contracts with

[2] At this stage in the bargaining, by "package" Respondent appeared to mean no more than a reservation that agreement on any constituent of its offer was contingent on the Union's agreement to the total offer. At the outset of bargaining, the Union had no reason to believe that Respondent was inflexibly committed to any constituent of its offer.

[3] Respondent claimed that it had unilaterally changed its health insurance in the past. It appears that when it did, the united Auto Workers, who represented another unit of the Employer's employees, had filed an unfair labor practice charge and a grievance, and that the matter had been settled in arbitration.

[4] Hereafter, this clause will be referred to as the Evergreen clause.

[5] It appears that Respondent had been angered that a union, not Local 285, had picketed Respondent's location in the past.

other mental health agencies expired on May 1 and the Union wanted the ability to take part in a coordinated job action to create a "crisis in care" to pressure the legislature for increased funding to the agencies. The Union indicated that it would not picket or block access to the Respondent's facility. Respondent responded that it could not in good conscience agree to a proposal that assists in the creation of the so-called crisis of care for its clients. The Union indicated that it would consider a multi-year contract as long as it suspended the no-strike/no-lockout article each May so that the Union had the ability to take part in statewide job actions. The Union explained that the action would be for a short time—no more than 3 days—and would not be directed at the Respondent. Management responded that it would not agree to this proposal for the same reason it did not want the contract to expire on May 1.

On June 14, the Union presented another proposal to the Employer. At that time, the Union rejected management's proposal concerning meeting with the unit to discuss health insurance. The Union modified its own wage proposal in small respects. The Union proposed that the contract be effective through May 1, 2003, with a wage reopener on June 1, 2002. On June 19, the Union presented the Employer with an additional proposal. This proposal sought to modify article 1: Recognition by adding two job titles to the unit. The Union also modified its proposal on Health and Welfare and eliminated its demand for a wage reopener. On or about the same date, Respondent made an economic proposal, (from 26 cents to 28 cents for mileage and a 2-percent across-the-board wage increase). A paid release day to go to Boston to lobby legislators was added. The duration proposal was modified from a 3 year agreement to 1 year with the economics as proposed and wage reopeners for the next 2 years.

On July 26, Respondent gave the Union another proposal. The contractual prologue stated, in relevant part, that: "All proposals are and will be set forth based on a package bargaining basis." article 19 stated: "Annually, and before any changes are made to the terms and provisions of the health insurance plan or plans, the Agency will meet with the Bargaining unit to discuss possible changes to any plan or plans and to obtain, input from the Bargaining unit." Finally, article 37 contained the Evergreen clause.

At the July 26 meeting, there was extensive discussion of the respective proposals and the parties reached tentative agreement on a number of issues. The proposal identified tentative agreements. Although not contained in the Employer's May 17 proposal, the parties had discussed and reached a tentative agreement on modifications to Article 14: Holidays, and the Union's proposal concerning COPE deductions. Both of these tentative agreements were incorporated and contained in the Employer's July 26 proposal.

In its July 26 proposal, Respondent proposed that each employee would receive a wage increase of 2 percent, retroactive to July 7, as well as a 2-percent increase at each step of the wage scale. Respondent also proposed increasing the starting salary for clinicians; which would have raised the salary of new clinicians 30 percent, while giving experienced employees a raise of 2 percent. Respondent justified its proposal on clinicians by stating that it had to have a wage that would attract skilled clinicians. Respondent proposed that the contract remain in effect until October 31, 2004, with a wage reopener on May 1, 2002 and May 1, 2003. This proposal also added language that had not been contained in its May 17, proposal. For example, it contained language concerning article 35: Political Education.

On September 6, the Union presented another proposal to the Respondent with an attached wage grid reflecting the positions of both the Union and the Respondent.

On October 19, the parties met again. Prior to this session, there had been give and take in negotiations and the parties reached tentative agreement on a number of issues. At the October 19 session, however, Respondent continued to insist on its article 19: Health and Welfare and article 37: Duration and Renewal proposals, despite the Union's having previously rejected these proposals. Also on October 19, Respondent gave the Union a package no longer identified as "Agency Proposals." Rather, the package was now identified as a "PACKAGE PROPOSAL AS A BASIS FOR SETTLEMENT." The prologue stated that if the package was not accepted in total or as a whole, then the whole package and all of its parts was rejected.

With the presentation of its October 19 package, Respondent said that the Employer would like to see the negotiations concluded. Respondent felt that the parties were not making much progress. Respondent's October package modified its proposed article 19. In this regard, Section 3 stated, "A committee comprised of up to five (5) bargaining unit members will meet with ServiceNet management, prior to any changes being made in the group health insurance plan . . ." The Respondent had just concluded negotiations with the united Auto Workers in a different unit, and it wanted the language on this provision in Local 285's agreement to be identical to that in the UAW's collective-bargaining agreement. It is not clear if the Union specifically rejected Respondent's proposal at the October 19 session; however, the Union had consistently rejected Respondent's previous article 19 proposals because it objected to language conceding Respondent's right to make unilateral changes in health insurance, as well as the provisions for direct consultations with employees rather than the Union. Respondent's October 19 package also retained the Evergreen clause. Respondent proposed to pay 90 percent of health insurance premiums on individual coverage and 65 percent on family coverage. The proposal called for a wage reopener on May 1, 2002 and May 1, 2003.[6]

[6] In par. 11 of its answer to the complaint, Respondent admits it believed the Union was "stalling" negotiations to achieve a coordinated bargaining date of May 2002, that by package proposal, Respondent meant bargaining would proceed by "continuing revisions of a 'package' until an acceptable 'package' as agreed to or, until, in the proposer's [i.e., Respondent's] opinion its 'package' could or should no longer be modified," that it insisted on its health insurance proposal because Respondent customarily dealt with health insurance on an employer-wide basis, and has obtained agreements from other unions on this subject, and that it insisted on its Evergreen clause because another union had agreed to it and, in its opinion, the continuation of arbitration obligations and dues checkoff were adequate quid pro quo for the perpetual no-strike clause.

The Union caucused to review the Employer's October 19 package. It had some major reservations about the proposal. Principally, Respondent's proposal allowed the Employer to unilaterally modify the health insurance plan; in this regard, the proposal called for the creation of a committee of five bargaining unit members that would meet only for consultation with management prior to any changes being made in the group health insurance plan. The language did not provide for any union participation, and effectively constituted a waiver of the Union's right to be consulted with respect to any changes in the health insurance plan during the term of the contract, or when read in conjunction with the Evergreen clause, after contract expiration, until a new agreement was reached. In addition, there were differences with respect to mileage reimbursement: the Union sought to increase reimbursement to the IRS rate, while Respondent proposed to increase the rate from 26 cents to 28 cents per mile. Differences remained with respect to the wage/compensation package: the Union wanted the base rate for the lowest wage raised to $10 per hour; uniformity in the steps on the wage grid; a 2.5-percent increase across the board, with a 2.5-percent increase at each step; and the Union proposed adding a 13th step. Finally, the Union objected to the Evergreen clause. The consequence of maintaining all terms and conditions of the contract, including the no-strike clause, in effect after the contract's expiration effectively deprived the Union of its right to strike in support of its position in future negotiations. This was unacceptable to the Union.

Although the Employer explained its October 19th package, there was no substantive discussion. The Union, after a caucus, said that it wanted to study the proposal and the session ended.

On November 16, the parties met again. The Union stated that it did not accept the package and Respondent said that it was not a package. The Union said it rejected the package. The Union suggested calling a mediator, and then walked out. No substantive issues were resolved in this session. By the same token, nothing was said on either October 19 or November 16 to suggest or indicate that negotiations were breaking down, had broken down, or that the parties were at impasse.

The parties next met on December 14. There had been no contact between the parties since the November 16 meeting. The Respondent presented the Union with what it identified as its "LAST, BEST AND FINAL OFFER." The prologue stated, "This proposal is being presented on a "package bargaining" basis. That is, if any part of the package proposal is unacceptable, then the "whole package is unacceptable." With the exception of its duration, the proposal was identical to the proposal made by the Respondent on October 19. With respect to the duration, the proposal was identical to the proposal made by the Respondent on October 19. With respect to the duration, Respondent proposed that the contract be effective through June 30, 2002; and in this regard, removed the reopener language that had been part of the October 19 package. Respondent's rationale for this change was that rather than the Union agreeing to a contract that they are unhappy with and being stuck with it for a period of 40 months, they would have a contract with negotiations for a new one commencing with about 4 months.

Otherwise, the Respondent's December 14 proposal contained the same language that separated the parties in October. Respondent maintained the article 19 language that allowed it to make unilateral changes in the health insurance plan, as well as the Evergreen clause in its article 37 proposal. Again, the Union rejected the article 19 proposal that would have allowed Respondent to make unilateral changes in health insurance. It also rejected the article 37 proposal, the Evergreen clause, that would have prohibited the unit employees from engaging in collective activity. The Union continued to reject this provision.

At the conclusion of the December 14 bargaining session, the parties scheduled another session for January 9, 2002. The Union remained willing to negotiate over everything; there were a number of issues outstanding. The Union did not feel that the parties were near impasse.

The Union cancelled the negotiating session scheduled for January 9, 2002. By letter dated January 16, 2002, Respondent, by Barshefsky, sought the Union's response to its offer. In the letter, Barshefsky stated that the response could be given in any number of ways and that it was not necessary that the parties meet. Barshefsky declared that if the Respondent did not get a response by January 25, 2002, it would be the Respondent's position that the parties "have reached impasse." Moreover, the letter concluded with a threat: "If we do not receive a response from you by January 25, 2002, it shall be our position that we have reached impasse in these negotiations, and we will be taking action to implement our Last, Best and Final Offer." Until this letter, impasse had not been mentioned or discussed by either party. Page responded by letter dated January 22, 2002, stating that he believed that the parties were a long way from impasse and demanded that the parties return to the table. In his letter, Page suggested that if the Respondent had any questions, he could be reached at the Union's office. Respondent, by Barshefsky, immediately responded by letter dated January 22, 2002. He again called for the Union to respond to the Respondent's December 14 proposal. He stated that the Respondent would not be making any further movement and that it did not intend to modify or change its proposal. Barshefsky also stated that if the Union failed to respond to the Respondent's proposal by January 25, 2002, Respondent would conclude that the parties were at impasse. The letter went on to state that if the Respondent did not hear from the Union, it would conclude that impasse was reached and it would implement at least the economic portion of the proposal.[7] Finally, Respondent stated, "Should you not get us an answer by January 25, 2002, then, as previously stated, it will be our opinion that we are at impasse and we will be taking necessary action to implement."

Respondent sent an additional letter dated February 5, 2002. It detailed the exchange of letters and, in relevant part, stated that the parties were at impasse. Further, it stated that the Respondent had received certain information from its health insurance carrier that premiums were to be increased. As a result, Respondent withdrew its entire proposal. Barshefsky stated that the Respondent would maintain the status quo for what would

[7] The letter does not foreclose the possibility that Respondent might implement all portions of its offer.

be the duration of a 1-year contract and noted it would be willing to implement step increases and the mileage increase proposed. The Respondent also stated that in the absence of an agreement, it would no longer be deducting union dues and would no longer be honoring the arbitration aspect of the grievance-arbitration article. The Union responded by letter dated February 7, 2002 and, in relevant part, demanded that the Respondent return to the bargaining table. By letter dated February 15, 2002, Barshefsky rejected the demand and stated that negotiations were at impasse and that the Respondent was going to maintain the status quo and, as a result, was unwilling to bargain over those issues.

On February 21, 2002, the Union notified Respondent that Tim Oppenheimer would be acting as the Union's representative at the bargaining table and that he was attempting to identify dates when the parties could meet. By letter dated February 22, 2002, the Respondent reiterated its position that the parties were at impasse and, by implication, refused to meet.

Nevertheless, the parties continued to meet periodically thereafter. A proposal was presented to the Union on September 3, 2002. article 19 had been modified. Although still demanding the right to meet with bargaining unit employees, Respondent provided that the employees would be designated by the Union. article 37 still contained the Evergreen clause. The Union, by letter dated September 12, 2002, countered, stating that it was agreeable to all of the terms of the Respondent's September 3, 2002 proposal except for the language of the Evergreen clause. The letter proposed that the language be removed. The Union's agreement was conditioned on the removal of the Evergreen clause. At no point has Respondent been willing to withdraw its proposed Evergreen clause.

C. Conclusions

1. General overview

Section 8(d) of the Act requires "the employer and the representative of its employees to bargain with each other in good faith with respect to wages, hours, and other conditions of employment . . . ." *Fibreboard Paper Products Corp. v. NLRB,* 379 U.S. 203, 209–210 (1964), citing *NLRB v. Wooster Division of Borg-Warner Corp.*, 336 U.S. 342, 346 (1958). Accordingly, both an employer and a union have a duty, in collective bargaining, to "enter into discussion with an open and fair mind, and a sincere purpose to find a basis of agreement . . ." *NLRB v. Herman Sausage Co.*, 275 F.2d 793 (5th Cir. 1960). Accord: *Kayser-Roth Hosiery Co. v. NLRB,* 430 F.2d 793 (6th Cir. 1970). As the Supreme Court has observed, "[c]ollective bargaining . . . is not simply an occasion for purely formal meetings between management and labor . . . ; it presupposes a desire to reach ultimate agreement, to enter into a collective bargaining contract." *NLRB v. Insurance Agents' Internarional Union*, 361 U.S. 477, 485 (1960). Accord: *Glomac Plastics v. NLRB*, 592 F.2d 94, 97–98 (2d Cir. 1979). Merely going through the formalistic motions of collective bargaining, however, i.e., "mere shadow boxing to a draw," does not fulfill a party's duty to bargain in good faith under the Act." See *Stonewall Cotton Mills v. NLRB,* 129 F.2d 629, 631 (5th Cir. 1942).

The Board draws a distinction between lawful "hard bargaining" and unlawful bad-faith bargaining. In determining that an employer's conduct crosses over the line, the Board looks at the totality of an employer's conduct, of which the proposals themselves are a part. In so doing, the Board's examination of a party's "bargaining position and proposals relates to whether they indicated an intention by the Respondent to avoid reaching an agreement; it is not a subjective evaluation of their content." *Litton Microwave Cooking Products*, 300 NLRB 324, 327 (1990). Thus, the Board will not determine whether a proposal is acceptable or unacceptable to a party. Rather, the Board will "consider whether, on the basis of objective factors, a demand is clearly designed to frustrate agreement on a collective-bargaining contract." *Reichold Chemicals*, 288 NLRB 69 (1984). Thus the Board has found bad-faith bargaining based, in part, on an employer's insistence on unilateral control over wages and benefits, when combined with a broad no-strike clause and an essentially illusory grievance-arbitration procedure. *A-1 King Size Sandwiches*, 265 NLRB 850 (1982). Such employer proposals "would strip the union of any effective means of representing its members . . . ." Id. at 859, quoting from *San Isabel Electric Services*, 225 NLRB 1073, 1080 (1976). If accepted, the proposed contract would have left the union with substantially fewer rights than if it relied solely on its certification. In addition, it is axiomatic that a party may insist only on those subjects of bargaining that are mandatory—that is, those subjects that relate directly to wages, benefits, and other terms and conditions of employment of the bargaining unit. While an employer may seek agreement as to permissive subjects of bargaining, it may not attempt to compel an unwilling party to accept such provisions as the price of an overall agreement. *Pleasantview Nursing Home*, 335 NLRB 961, 963 (2001).

By October 19, two things were apparent. First the Union made it clear it would not accept Respondent's health care proposal or the Evergreen clause. Second, Respondent not only continued to advance these proposals over the Union's objection, but also began to assert that the parties were at impasse, privileging it to implement its package or constituent parts. Because of its insistence that all its proposals continued to be treated as total "packages," as of October 19 and thereafter, Respondent effectively insisted to impasse on January 25, 2002, on what I will find are permissive subjects of bargaining, a clear violation of Section 8(a)(5) of the Act. In *NLRB v. Borg-Warner Corp.*, supra,, the Supreme Court held that insistence to impasse is available to a party only with respect to a mandatory subject of bargaining. Insistence to impasse on a nonmandatory subject of bargaining violates the statutory duty to bargain in good faith. See also, *Intermountain Rural Electric Assn.,* 305 NLRB 783 (1991); *Pleasantview Nursing Home,* supra.

Neither of the two involved proposals are per se unlawful and the Union could agree with them. However, if they are permissive subjects of bargaining, the Respondent cannot insist on them to impasse in the face of union objection without violating the Act. Thus, the core question in this case is whether the two proposals in question, article 19 and article 37 are mandatory or permissive subjects of bargaining. I believe that article 37, the Evergreen clause is a permissive subject of bargain-

ing. I agree with General Counsel that Respondent's proposed Evergreen clause attempted to control terms and conditions of employment outside of the term of the collective-bargaining agreement in a way analogous to an interest-arbitration clause. The Board has consistently held that an interest-arbitration clause is a permissive subject of bargaining. Even parties that are subject to interest arbitration cannot be compelled to adopt a new contract with an interest-arbitration provision. *Laidlaw Transit*, 323 NLRB 867 (1999). Among other objections, the Union pointed out that this proposal effectively denied employees the right to strike at any time, including in support of the Union's economic position following contract expiration. Indeed, this result was what Respondent was seeking. While the Union could voluntarily agree to such a limitation, Respondent could not lawfully insist upon it, or threaten to impose upon a claim of impasse.

I believe proposed article 19 is also permissive. It does not affect the actual health plans proposed by Respondent, rather it goes to the Union's right to bargain over the plans, thus affecting the parties' bargaining relationship rather than hours, wages, benefits, or a term or condition of employment. It also tends to undermine the Union's statutory role as bargaining representative of the unit on an issue of vital importance to the represented employees. It would give the Respondent the right to bypass the Union and deal directly with employees. It would also require the Union to waive its right to bargain over changes in health insurance and give the Respondent an unfettered right to implement any health plan changes it wanted. This situation is somewhat similar to that in *McClatchy Newspapers*, 321 NLRB 1386 (1996). There, the employer wanted the unfettered right to determine wages without objective formula or criteria, excluding the Union from any say in the matter. The Board stated: "In sum, it is not the Respondent's bargaining proposal that we view as inimical to the policies of the Act, but its exclusion of the Guild (union) at the point of implementation of the merit pay plan from any meaningful bargaining as to the procedures and criteria governing the merit pay plan, when the Guild has not agreed to relinquish its statutory role. The impasse in this case occurred not with respect to the establishment of specific working conditions according to the Respondent's proposal, but more generally resulted from the employer's insistence that it not be restricted in exercising its discretion in the overall process of setting wage increases generally." Id. at 1391. The Board went on to find the employer's insistence on its wage proposal to impasse unlawful. I find the Respondent's action in this case unlawful for the reasons set forth in *McClatchy Newspapers*, and my finding that Respondent's action constitutes insisting on a permissive subject of bargaining to impasse in violation of Section 8(a)(5) and (1) of the Act. See also, *Colorado-Ute Electric Assn.*, 295 NLRB 607, 609 (1989); *Retlaw Broadcasting*, 324 NLRB 138 (1997).

Respondent's effective declaration of impasse and threat to implement its "Last, Best and Final" offer was also unlawful. In fact, no lawful impasse had been reached. No impasse could be possible while the Respondent was insisting on permissive subjects of bargaining to which the Union objected.[8] Both of these proposed provisions would have stripped the Union of rights it enjoyed simply by virtue of certification. The Board has not looked favorably on such provisions. See *Retlaw Broadcasting*, supra; *Laidlaw Transit*, supra. By so insisting on these two permissive subjects of bargaining, Respondent has bargained in bad faith in violation of the Act. *Pleasantview Nursing Home*, supra; *McClatchy Newspapers*, supra.

I decline to find that Respondent entered negotiations with a fixed intention of reaching agreement only on its terms in violation of the Act. It did engage in give and take on substantives issues. As noted earlier, it is not precluded from engaging in hard bargaining. I have found that proposed articles 19 and 37 are permissive subjects of bargaining and that Respondent's insistence on them to impasse does violate the Act. However, I could find no case which clearly states that identical or very similar proposals are permissive subjects of bargaining under Board law. Respondent may well have believed them to be mandatory subjects of bargaining and if correct, could rightfully insist upon them. I also decline to find that Respondent has engaged in surface bargaining for the same reason.

CONCLUSIONS OF LAW

1. ServiceNet, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Service Employees International Union, Local 285, AFL–CIO, CLC is a labor organization within the meaning of Section 2(5) of the Act.

3. The Union is the exclusive collective bargaining representative of a unit of Respondent's employees described as follows:

> All regular full-time and regular part-time Crisis Clinician 2, Crisis Clinician 3, Outpatient Therapist (LICSW), Outpatient Therapist (Licensed Psychologist), Day Treatment Counselor 1, Day Treatment Counselor 2, Medication Clinic Nurse, Program Aide, Teacher Assistant, Early Intervention Specialist 1, Early Intervention Specialist 2, Allied Health Professional, Account Clerk 1, Account Clerk 2, Account Clerk 3, Purchasing Specialist, Staff Accounts, Accounts Receivable Assistant, Accounts Receivable Specialist, Senior Accounts Receivable Specialist, Computer Support Technician, Computer Technology Specialist, Secretary/Receptionist, Administrative Assistant, Early Intervention Information Systems Coordinator, Triage Coordinator, Revenue Coordinator, Intake Coordinator and Clinician (Bachelor's level) employed by Respondent, but excluding all other employees, guards and supervisors as defined in the Act.

4. Respondent violated Section 8(a)(5) and (1) of the Act by insisting to impasse on its proposal to bypass the Union and deal directly with unit employees on the matter of unilateral changes to health plans.

5. Respondent violated Section 8(a)(5) and (1) of the Act by insisting to impasse on its so-called Evergreen proposal

[8] I find it telling that by letter dated September 12, 2002, the Union agreed to all of Respondent's proposals except the Evergreen clause and Respondent still continues to insist on that clause.

6. Respondent violated Section 8(a)(5) and (1) of the Act by insisting to impasse on nonmandatory subjects of bargaining, declaring impasse, threatening to implement a part of its proposal, and by failing to bargain in good faith as required by the Act.

7. Respondent did not violate the Act in other regards as alleged in the complaint.

8. Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On request, bargain collectively with the Union as the exclusive collective-bargaining representative of the Respondent's employees in the above-described unit with regard to rates of pay, wages, hours of employment, and other terms and conditions of employment and, if an agreement is reached, embody that agreement in a written, signed agreement.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[9]

ORDER

The Respondent, ServiceNet, Inc., Northampton, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Insisting to impasse on its proposal to bypass the Union and deal directly with unit employees on the matter of unilateral changes to health plans.

(b) Insisting to impasse on its so-called Evergreen proposal.

(c) Insisting to impasse on nonmandatory subjects of bargaining, declaring impasse, and threatening to implement a part of its proposal.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action deemed necessary to effectuate the policies of the Act.

(a) On request, bargain collectively with the Union as the exclusive collective-bargaining representative of the Respondent's employees in the unit with regard to rates of pay, wages, hours of employment, and other terms and conditions of employment and, if an agreement is reached, embody that agreement in a written, signed agreement.

(b) Within 14 days after service by the Region, post at its facility in Northampton, Massachusetts copies of the attached notice marked "Appendix."[10] Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 1, 2002.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 25, 2003

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the united States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities

WE WILL NOT in negotiations, insist to impasse on our proposal to bypass the Union and deal directly with our unit employees on the matter of unilateral changes to health plans.

WE WILL NOT in negotiations, insist to impasse on our Evergreen proposal.

WE WILL NOT insist to impasse on nonmandatory subjects of bargaining, declare impasse prematurely, and threaten to implement a part of our proposals.

WE WILL on request, bargain collectively with the Union as the exclusive representative of our employees in the unit with regard to rates of pay, wages, hours of employment, and other terms and conditions of employment and, if an agreement is reached, embody that agreement in a written, signed agreement.

SERVICENET, INC.

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[9] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[10] If this Order is enforced by a judgment of a united States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the united States Court of Appeals Enforcing an Order of the National Labor Relations Board."